



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE
200 ROGERS ROAD, KITTERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

Application to the
BOARD OF APPEALS

DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

FLOODPLAIN VARIANCE REQUEST

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on Section 16.6.6.7, for Floodplain Management Variances (30-A MRS. §4353 (4-C)).

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

PROPERTY INFORMATION								
ADDRESS								
MAP		LOT #		LOT SIZE				
BASE ZONE(S):			OVERLAY ZONE(S):					
The subject property: [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .								
PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:								
NAME(S)								
MAILING ADDRESS								
CITY		STATE		ZIP CODE				
PHONE No.				e-MAIL:				

NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:					
NAME(S)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

Variance means:

1. a relaxation of the terms of Title 16 where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.
2. As used in Title 16, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone).

Describe the general nature of the floodplain variance request:

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: _____

By: _____

(Signature)

(Print Name)

FLOODPLAIN VARIANCE CRITERIA

The Board may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of Title 16, Chapter 16.9, Article VIII, Floodplain Management. The Board may grant a variance from the requirements of this chapter consistent with state law and the following criteria:

- A. Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result
- B. Variances may be granted only upon:
 - 1. A showing of good and sufficient cause; and
 - 2. A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
 - 3. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and (*Item 4, answered below*)
- C. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - 1. Other criteria of Sections 6.4.2 and 16.9.8, Floodplain Management, are met; and
 - 2. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in subsections A through D of this Section.

I UNDERSTAND THAT THE BOARD OF APPEALS:

- ☐ May hear and decide on a variance request within the limitations set forth in Title 16, Section 6.4.2B, Variance Request, and 30-A MRS §4353(4).
 - ☐ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
 - ☐ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
 - ☐ Will determine my Burden of Proof:
 - 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
 - ☐ Requires substantial evidence as the Standard of Review for this request, meaning:

"More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.
 - ☐ May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.
 - ☐ Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the Town is responsible for enforcing.
 - ☐ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
 - ☐ Will not even hear my appeal unless I can show that I have "standing" to have my request heard.
 - ☐ Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
 - ☐ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the rulings of the State Supreme Judicial Court.
 - ☐ Tries to make decisions it believes would be upheld if appealed to Superior Court.
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In order for a variance to be granted, the applicant must demonstrate to the Board that the strict application of the terms of the ordinance would cause undue hardship. There are four criteria, each of which must be met before the Board can find that a hardship exists. Please explain how your situation meets each of these criteria listed below, either in the space provided or on a separate sheet.

B4. A determination that failure to grant the variance would result in "undue hardship," which in this subsection means:

a. That the land in question cannot yield a reasonable return unless a variance is granted, and

b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood, and

c. That the granting of a variance will not alter the essential character of the locality, and

d. That the hardship is not the result of action taken by the applicant or a prior owner.

To the applicant:

The goal is to provide building and use standards that apply to all properties equally within a given zone. Getting an exception or variance to standards is purposely difficult because granting variances to the standards would diminish the value of in protecting neighboring properties. It is important that you respond completely to the requests below:

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.